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Transnational Policy Governance: Scoping the limits of existing models and frameworks, with an application to sustainability

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***This paper presents work in the very early stages of development – as will become blatantly obvious when you read it!. Please do not quote.
Please feel free, however, to send comments to the authors***

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Introduction

In recent years, there has been a rapid increase in research on policymaking and policy processes that span national/state borders. The purpose of this paper is to put out for discussion some initial ideas on mapping the theoretical challenges and empirical applications of transnational policy governance (TNG). We believe there is space between current conceptualisations of TNG and the current understanding and application of theoretical frames for analysing TNG. These include but are not limited to cycles and stages models, and multi-level governance (MLG), models that we referred to in the original proposal for this conference.

Governance, as a concept, is broad – indeed, it has been argued that as a concept, it has been undermined by being over-stretched (6, 2015). That said, a definition that acts as a useful starting point here is that “‘governance’ is a term used to describe the *mode* of coordination exercised by state actors in their interactions with societal actors and organizations’ (Howlett, 2011: 8, emphasis in original). The value of this definition is that it tells us something about where state actors (‘governments’) fit into governance. Arguably it is even more useful because it does not impose specific structures on the actors involved and on the types of relationship between them – specifically hierarchy and/or network. This stands in contrast to those parts of the literature that identify governance with networks (for a trenchant critique of this aspect of the governance literature, see 6, 2015; see also Bell and Hindmoor, 2009). It is also worth noting that, in spite of the title of Rosenau and Czempiel (1992), ‘Governance Without Government’, in the opening chapter James Rosenau states clearly that governance ‘embraces governmental institutions’ (Rosenau, 1992: 4).

What is not clear, however, is how the transnational fits into this, and how ‘government’ fits into the transnational. We should perhaps at this point make it clear that when we refer to TNG, we are referring neither to the EU, nor to ‘global governance’. The EU, in this sense perhaps more than any other, can be seen as *sui generis* in its mix of the supranational and the inter-governmental. Moreover, the EU as a singular conception shares elements of ‘stateness’ with its constituent member-states. Equally, global governance is distinct in its intended geographical reach (see, for example, the chapters in Part IX of Levi-Faur, 2012). Hale and Held (2011) present 51 examples of TNG, but not even here is there a clear analysis of a key theme for us: what do states do in TNG (see also Sassen, 2002)?

Analytically, does TNG mean simply adding the ‘transnational’ to existing models, or do we need to look at different, new models? Peters (2015: 97-99) considers three strategies for policy implementation. To quote him at some length on the third of his three strategies (Peters, 2015: 98-99, emphases added):

The third approach to implementation is also concerned with context and the socio-economic environment of policy, but tends to use the social actors rather than to have policy necessarily shaped by them. The use of horizontal patterns of implementation **involving networks and market actors may facilitate policy delivery**, if not have policies shaped ex ante by those socio-economic forces. Of course during implementation the social and market actors **will almost certainly** influence the nature of the policy as it actually goes into effect “on the ground”. We should in fact expect more drift from the intentions of the framers of the legislation, an outcomes that can be compensated for by **the ability to leverage the resources of the non-governmental actors involved**.

This is a really interesting quote from our viewpoint – but two vital questions follow. The first, simply, is how will all this happen? Second, how might this be affected if the policy in question is transnational in nature?

One of the questions we continue to be challenged by, despite several years having passed since Stone’s famous dictum, is do we still remain methodological prisoners of the state? If we begin our analysis with ‘policy’, in the abstract, can this help us unpick some of these challenges? Further, ‘transboundary’ can refer to the transnational, spanning the borders between sovereign states, but equally it can refer to boundaries between policy spheres. How does this affect the institutional nature of possible policy responses? ‘Policy’ is our unit of analysis, but our attention is on the policy processes that generate transnational policy outcomes: what does the pursuit of transnational policy outcomes mean for the determination of those policies? Moreover, if we think of policy as consisting of discrete phases, how is this affected by a policy process that spans borders?

In this paper we propose a typology of possible TNG arrangements, from which we extract one particular governance structure that, whilst starting to emerge in practice, remains under-theorised. We then consider this in the context of sustainability, the *locus classicus* of

transnational policy making. Whilst this, of itself, is not particularly new, a key analytical question for us is what happens when state actors, operating across state borders, lose their 'stateness'? What are the implications for TNG when a state moves from the top of a domestic policy-making hierarchy, to being just another actor in a transnational governance network, without even the shadow of hierarchy? NB at this stage we use the notions of hierarchy and network somewhat loosely, noting the concerns of 6 (2015).

A Typology of Transnational Governance Arrangements

As sovereign borders weaken in their policy significance, so the number of actors involved in TNG is growing, as are the ways in which they interact and the roles they take on. These can range from hierarchical arrangements, through hybrid arrangements where state actors still possess the shadow of hierarchy, through to network-based and market-based arrangements. It may be that transnational policy problems have transnational solutions; or solutions available via inter-governmental arrangements. A transnational solution may be obtainable exclusively via nonstate links. These can involve transboundary multinational actors (private market actors and/or third-sector/non-governmental organisation [NGO] actors), or cross-border links between actors whose spheres of influence remain defined by state borders.

In amongst these options is a case that we have a particular interest in, an emerging and under-theorised governance structure where the state, as an actor, participates extra-territorially in a network without the sovereignty granted by operating within its state borders. It follows from this that institutional context is extremely important – and these institutional factors can be both formal and informal in nature. We thus offer a typology based on four distinct policy scenarios. In order to avoid confusion with the type I and type II categorisation of MLG (see below), we refer to these as types A-D.

Type A: transnational governmental policy solutions

In this category, there is a supranational level of authority. Illustrative examples include some of the institutions of the European Union, for example the European Commission and the European Court of Justice. But we can also distinguish between these examples, where the supranational authority has a legally-binding relationship with the national (territorially sovereign-based) actors, and those where the relationship is not defined in such legal terms. An example here would be the Dispute Settlement Procedure of the World Trade

Organisation (WTO), which relies on inter-subjective agreement between WTO signatories for compliance.

Type B: intergovernmental policy solutions

In this category, there will be examples where countries negotiate directly with each other to deliver policy outcomes and solutions to problems. In cases with larger numbers of countries, however, a supranational organising structure may facilitate intergovernmental engagement. Following on from the last example, such a situation exists under the WTO umbrella for multilateral trade liberalisation talks, where ultimate authority rests with the national parties. As the WTO has described itself on its website, it is effectively the table around which the WTO member countries sit and negotiate.¹

Type C: transnational state-nonstate policy solutions

This category is the one in which we are particularly interested. In this category, states engage with nonstate actors but, crucially, they do so beyond their sovereign borders. As a result they lack sovereign authority over those nonstate actors – indeed, they even lack a shadow of hierarchy. States thus become *de facto* nonstate actors. An example here is to be found in EU biofuels sustainability criteria, an example we discuss in detail later. The European Commission must work collaboratively with nonstate actors in countries around the world, from the private and third sectors, to deliver on the sustainability dimensions of EU biofuels policies. But, lacking even the shadow of hierarchy, they have no way to force/enforce participation in and compliance with their state-driven domestic policy.

Type D: transnational private actor solutions

In this category, we have a multitude of possible examples where private actors – firms, third sector actors/NGOs – collaborate on solutions to problems. Examples here include the networks on which Fairtrade, the Forest Stewardship Council, the Marine Stewardship Council, the Roundtable on Sustainable Palm Oil and many others are built.

We argue that, with the existing literature, TNG Type C is the least developed and the least theorised. This is a significant omission, however. The process of economic globalisation, the emergence transnational private sector actors such as Transnational Enterprises (TNEs), and

¹ https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm. Last accessed 28/07/2015.

the concomitant weakening of state economic sovereignty, is being accompanied by the parallel emergence of transnational political challenges such as those relating to sustainability. Driven by transnational policy concerns over, for example, climate change and environmental degradation, state actors are having to find novel ways of engaging with these challenges (Bulkeley et al, 2014, in particular Chapter 4).

Some of these are being embedded into existing structures, such as negotiations within the WTO over trade in environmental goods. Others adopt existing patterns of negotiation, such as the intergovernmental approach to climate change, which began with the 1992 Rio Earth Summit and the resulting Kyoto Protocol. Environmental and sustainability concerns are increasingly creating market opportunities for firms. Hence, whether the move is seen as genuine or greenwashing, we have a multitude of forms of product certification (of which Fairtrade is but one example), much of which is promoted via cooperation between private and third sector actors.

In between, however, TNG Type C represents an emerging form of governance. In this policy space, the emergence of new types of governance challenge, as a result of globalisation and transnational policy problems, are being responded to by states taking on new roles (as distinct from merely losing roles, as exemplified by concepts such as ‘hollowing-out’, ‘steering not rowing’, etc). This, in turn, implies new roles and windows of opportunity for nonstate actors. The primary purpose of this paper is to offer an initial attempt to scope out the boundaries of this form of TNG and what it might mean for developing theoretical perspectives on this type of policy process.

Where Next? Links to Existing Literatures

In the Introduction, we asked whether, and to what extent, TNG can be investigated utilising existing theories and frameworks, or whether new frameworks would be needed. In this section, we start the process of scoping this issue, by exploring briefly some of the key contributions to the policy governance literature that may be most relevant to our analysis.

Boundary Spanning Policy Regimes

Jochim and May (2010), wrote about Boundary Spanning Policy Regimes (BSPRs) as a way of bringing together analyses of policy processes and questions of governance, but going beyond the research based on policy subsystems. In their analysis, BSPR refer to policy

boundaries, with the examples taken from domestic US policymaking. Boundary-spanning problems can span state boundaries (Peters, 2015: 18), but we are not aware of any work utilising this concept to analyse policies which span state boundaries. Yet as Peters (2015: 19) says, ‘the most important problems in governing cut across the conventional boundaries of policy and geography.’ Therefore, is the notion of ‘regime’ relevant to our study?

Jochim and May (2010: 309) are clear that they add the phrase ‘boundary-spanning’ to the phrase ‘policy regimes’ in order to distinguish their work and their use of the concept of regimes from the multiple existing literatures and the various uses to which the term has been put. That said, they apply four key terms not only to the understanding of BSPR but also to show how the uses of the terms differ from the policy subsystem literature: issues, ideas, interests and institutions. As they elaborate on the various interpretations of ‘regime’, notions of power and authority are very important. Citing the work of Stoker (1991), they identify (on page 310) a subset of the regime literature which looks at ‘implementation regimes as arrangements for carrying out policies’ whilst, from Howlett (2009), they report (also on page 310) on “‘policy regime logics” that link policy tools and objectives.’

These excerpts, and the subsequent and more detailed discussion of issues, ideas, interests and institutions, indicate that whilst there are several ideas from the policy regime literature that are relevant to our analysis of TNG, they would at the very least require significant adaptation. Notably, the literature on regimes appears to embed notions of power and authority – so is this a necessary condition for defining a regime? Are the notions of regime and network mutually exclusive? If so, this would limit our options to selecting specific ideas from the regime literature, but not the word ‘regime’.

Multi-Level Governance

At the heart of MLG, a ‘woolly’ and ‘slippery’ concept (Cairney, 2012: 156), are three analytical dimensions (Piattoni, 2009: 163): ‘political mobilization, policy-making and polity restructuring’, examining three distinct types of relationship (at least in ‘the European modern state’ [*ibid*]): centre-periphery, state-society, and domestic-international. Given, in particular, its attractiveness as a concept for analysing the EU, its use has come a very long in just over 20 years (Stephenson, 2013).

MLG can itself be split into Type I and Type II (Hooghe and Marks, 2003). Type I MLG – seen, for example, in federal political structures – consists of a limited number of different territorial jurisdictions, with non-intersecting membership and which undertake multiple functions. Hooghe and Marks (2003: 236) use a Russian Doll analogy to illustrate Type I. Type II MLG, on the other hand, consists of specialised task-specific jurisdictions, potentially many in number, operating on widely-varying scales, and they ‘tend to be lean and flexible – they come and go as demands for governance change.’ (*ibid*). With Types I and II MLG, the state plays a critical role – typically within a MLG system that has at least an element of hierarchical authority.

The categorisations of Piattoni suggest MLG could be very useful for the present paper. Moreover, the flexibility and task-specific features of Type II MLG can contribute important insights. Yet there remain fundamental questions over the design, definition and use of MLG (Tortola, 2014). Moreover, there is much to be done reconciling MLG and policy networks (see Jordan and Schout, 2006; Stephenson, 2013: 828). Central to this would be a clear elaboration of extent to which the verticality of MLG and the horizontality of policy networks are critical defining characteristics. This would be especially important given the prevalence of the phrase ‘multilevel networks’ in the policy literature. Ultimately, Type II MLG is a rather broad, catch-all category which, as a result, lacks somewhat in clear theoretical traction. Regarding our Type C TNG, clarification of the verticality and horizontality of relationships between different actors – and especially the place of the state in these relationships – could be informed by the MLG literature but Type II MLG does not, of itself, describe policymaking structures or processes.

Policy Cycles or Stages

Is it a bird? Is it a plane? Or a theory? Or a framework or heuristic? It is fair to say that thinking on this has evolved considerably over the half century or more since Lasswell (1956) elaborated the idea that ‘policy’ and the ‘policy process’ could be split into discrete elements. These stages of the policy process are often referred to as a policy cycle – and sometimes represented by a circular diagram. The significance of this lies in the idea that the policy process is unending, but the ‘end’ of one pass through the stages represents the start of the next pass through.

One common presentation, of five stages, is: agenda-setting, formulation, implementation, budgeting, evaluation (Peters, 2015). An alternative listing, of six stages, captures this notion of an ongoing process: agenda setting, policy formulation, legitimation, implementation, evaluation, and policy maintenance, succession or termination (Cairney (2012: 33). What we do not have, however, is ‘a theory applicable to public policy as a whole’ (Cairney, 2012: 31). Indeed, he questions whether it is appropriate to seek one, or feasible to do so, given the complexity of the real world and of the processes involved. Instead, what we have is theories which focus on some of the individual stages – notably of agenda-setting, formulation and implementation. The policy cycles or stages model, on the other hand, sets out precisely to offer a representation of the entire public policy process – and thus, almost by definition, cannot be captured by a single theory.

The notion of the policy cycle may still be used by policymakers as a way of framing the policy process, especially such processes as lead to the evaluation of public policies as part of a process of audit and accountability, but the idea of the stages or cycle model as being a theory of public policy has been dismissed. Indeed Weible (2014: 9) argues that this failure of stages/cycles to offer a theoretical explanation for the policy process led directly to ‘Theories of the Policy Process’, now in its third edition (Sabatier and Weible, 2014). Although the first edition carried a chapter on policy cycles, it was removed from the second edition, which carried a damning indictment against the ‘stages heuristic’ as a theory (Sabatier, 2007: 6-7).

A key issue with the notion of stages or cycles is that it implies some sort of natural order through which issues will progress, whereas ‘the process may actually begin at almost any stage, and then fill in the missing parts later.’ (Peters, 2015: 55). Yet this also implies that the whole can be broken down into component parts for analytical purposes, even if there is not necessarily a single sequence through them. Moreover, it implies that ‘policy-making is viewed as an *instrumental* problem-solving activity’ (Howlett, 2011: 18, emphasis in original), trying to match policy means with policy goals. Howlett goes on to align five stages of policy formation with five stages of applied problem-solving: problem recognition, proposal of solution, selection of solution, putting solution into effect, monitoring results (Howlett, 2011: 19).

We thus observe that whilst policy cycles or stages models do not represent a theory of the policy process, they offer a way of understanding various dimensions of the policy process,

each of which we can explore in more detail through other lenses. This is implied by Sabatier and Weible (2014), and made more explicit by Howlett *et al* (2009). We also note the argument of Cairney (2012), who introduces the policy cycle alongside comprehensive rationality, which posits that ‘elected policymakers translate their values into policy in a straightforward manner.’ (Cairney, 2012: 5). This applies to the ranking of policy preferences, with clear-cut stages for then delivering on this. By such a policy process are the benefits to society maximised.

This, like the notion of the policy cycle, has gone from being a representation of reality towards something more like a theoretical ideal or limit case. As a result, just as views of what the policy cycle represents have shifted, from being the way policymakers organised policymaking, to ‘an organising framework for the study of policy.’ (Cairney, 2012: 6), so comprehensive rationality has been replaced as a central organising concept by bounded rationality. That said, because most of the theories that have emerged ‘explore the consequences of cyclical decision making in which policy represents “its own cause”’ (Cairney, 2012: 7), discussion of public policy still needs mention of comprehensive rationality and policy cycles.

How does this help us in our goal of trying to understand more deeply TNG and transnational policy processes? Most importantly, it offers us a framework through which we can chart different dimensions of the policy process in different territorial spaces. We can use the notion of a staged, strictly sequential process as a point of departure. If, for example, different stages are located across different territorial spaces, how might this influence the actors involved, and their roles, compared with a policy process located entirely within a single territorial space? Moreover – and, from a theoretical point of view, more significantly – how might this affect what happens when?

Peters (2015) suggests that certain things need to happen in a given policy process, but not necessarily in a particular order. But what if, by introducing the extra-territorial dimension there is a need to go backwards through the stages and revisit or re-enact certain *stages*, but this time in a different territorial space – and do so in order to undertake aspects of the policy process which, necessarily, *follow* those elements already undertaken domestically? To be more concrete with this hypothetical, what if the transnational setting of a policy process requires a two-phase approach? The first phase, conducted domestically by a sovereign state

power, perhaps progresses through to decision-making. In an increasingly globalised world, however, perhaps implementation of the ‘domestic’ takes place extra-territorially. But can a policy process simply continue, sequentially, in a different territory or transnationally? Or can the policy process only deliver implementation of the policy by first revisiting other stages? It is these questions to which we seek answers. We also offer later a brief discussion of the EUs biofuels sustainability criteria as a practical illustration of such challenges.

Towards a Theoretical Formulation for Type C TNG

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The Transnational Governance of EU Biofuels Policy

Our aim, ultimately, is to develop deductively a strong theoretical understanding of our Type C TNG. That said, this must have empirical relevance. We first started considering this example of TNG through our work on biofuels policies (see, *inter alia*, Ackrill and Kay, 2011; 2014). In particular, it is the governance questions which surround the policy on environmental sustainability criteria (see below) that is the focus of our attention. We present below an outline of the key features of this, to help illuminate the foregoing, more abstract conceptualisation of a particular governance type.

The Case Study – An Introduction

The EU, in 2009, set a target that, by 2020, 10% of transport fuel consumed in the EU should come from renewable sources (EU, 2009a, the Renewable Energy Directive, or RED; and 2009b, the revised Fuel Quality Directive, FQD). This is one part of a wider set of climate policy objectives, the Climate and Energy Package, developed as a means of reducing emissions of greenhouse gases (GHGs); helping address energy security concerns; and promoting rural development.

Most of the renewable fuel is expected to be biofuels (ethanol or biodiesel), for which the EU is seeking to create a market. Given the scale of this ambition, imports are required – whether of the biofuels, or the inputs (‘feedstocks’) from which biofuels are derived. The notion of biofuels as a ‘renewable’ energy is based on the renewability of the feedstocks. With the EU transport sector still nearly 100% dependent on fossil fuels, transport is a key target for reducing GHG emissions and promoting energy security. Specifically, biofuels can potentially reduce the emissions from transport fuels; and they, or the feedstocks, can be

produced in any country. EU biofuels policy thus promotes the development of a market based on transnational supply chains (we do not refer to global supply chains because, in practice, most biofuels or feedstocks come from a relatively small number of countries).

There is a particular challenge facing policy-makers, however: EU policy is predicated on biofuels delivering reductions in GHG emissions. The problem is that, because of the multiplicity of feedstocks that can be used to produce biofuels, cultivation methods that can be adopted, and technology pathways that can be used to turn the feedstocks into biofuels, different biofuels can have vastly differing emissions performances. Whilst biofuels have the potential to deliver huge emissions reductions compared with fossil fuels they can also, potentially, result in considerably higher emissions. The challenge for policy-makers is to try to ensure the biofuels delivered to market are only those which deliver emissions reductions.

In this, an important distinction is between so-called first generation and advanced biofuels. First generation biofuels, which dominate current production, are based on feedstocks that can also be used as food by humans; and some can have very poor emissions performances. Advanced biofuels have the potential to deliver much better emissions outcomes than first generation biofuels, whilst reducing or avoiding altogether other potential negative side-effects of first generation biofuels, but current levels of commercial production remain low.

Thus EU policy has two strands: to seek to ensure first generation biofuels delivered to the EU market are those with the best emissions-reduction outcomes; whilst encouraging firms to develop commercial-scale second generation biofuels. Both of these represent significant policy challenges for the EU however as they both, in practice, involve the EU operating in the type of governance network where a range of actors are required to participate, but over which the EU lacks the sovereign authority to force either participation or specific desired contributions and outcomes. We now explore these policy challenges further.

Containing the Downsides of First Generation Biofuels

Problems with biofuels arise from the production of the feedstocks from which they are derived. The EU solution has been to establish a series of environmental sustainability criteria (ESC), which establish constraints on where feedstocks, in particular those for first generation biofuels, can be produced. Specifically, the ESC identify land-types which cannot

be used to grow feedstocks for biofuels sold in the EU, defined in terms of specific function or status before 2008. Lands excluded for biodiversity reasons are:

- primary forests and woods, undisturbed or lacking “visible” human activity;
- land protected under law, international or inter-governmental agreement (unless feedstock production does not compromise the nature-protection goals);
- highly biodiverse grassland (except, for “non-natural” grassland, if biofuel feedstock harvesting is required for grassland status to be maintained), although by the end of 2010, the Commission has still to produce a definition of highly biodiverse grassland.

Certain types of land are excluded as carbon would be released if cultivated for feedstock production:

- wetlands;
- continuously forested area;
- undrained peatland (unless feedstock production and harvesting does not require the land to be drained).

To reinforce these criteria, targets have been set for the minimum GHG emissions reductions, relative to fossil fuels, that biofuels must deliver. Initially, biofuels must deliver at least 35% lower GHG emissions than the fossil fuels they are replacing, rising subsequently to 50% or 60%, depending on when the processing facility was built. In addition, by 2020 total GHG emissions must be 6% below 2010 levels (EU, 2009b).

The ESC policy *implementation* challenge is ensuring the land-use criteria set out above are respected; but the EU also faced policy *design* challenges. Indeed, these two dimensions of EU policy are inextricably linked. The land-use criteria reflected emissions-related concerns and biodiversity concerns. A major policy design challenge arose over whether or not the ESC should include mandatory compliance with social and labour standards. Within the EU, there was strong support from MEPs in the European Parliament for their inclusion (Daugbjerg and Swinbank, 2015). That said, others were concerned that their inclusion, as mandatory criteria, would violate World Trade Organisation (WTO) trade rules. This view

was held by some MEPs and some member states, and by key individuals within DG-TREN.² The latter view prevailed.

The WTO was not involved directly in the process of determining the ESC. It was, however, involved indirectly in two distinct ways. First, it cast a shadow over the discussions regarding what the ESC could include as mandatory criteria without risking violation of trade rules (what Lydgate, 2012, terms ‘regulatory chill’). Specifically the shadow, or the threat, was that other member countries could utilise the WTO as the institutional home of the Dispute Settlement Procedure. The authority of this reflected intersubjective agreement between the member countries that it would be binding on WTO members, regardless of the presence or absence of actual, legally-binding, authority over sovereign states.

Second, the WTO had an indirect role in the *process* of design and agreement of the ESC. The ESC are an example of an international standard – put in place by one WTO member and relevant to others through international trade. As such, their design must conform with the Technical Barriers to Trade Agreement (TBTA), one of the agreements negotiated between WTO member countries and which sits under the WTO umbrella. Specifically, Annex 3 of the TBTA advises on how to establish such rules in order to avoid them violating WTO rules and, thus, risking triggering a dispute.

A key feature is conducting an open, inclusive process, whereby the proposals are circulated, then comments received and given due consideration in determining the final policy. The EU followed this process very clearly (Ackrill and Kay, 2011). Furthermore, a policy *designed* with the input of other countries being heard is less likely to violate WTO rules – although an action may still be triggered if it is *implemented* in a way which violates WTO rules. Thus the state, the EU, designed a policy reflecting a range of domestic political preferences, recognising the shadow cast by the WTO, utilising a process that allowed the input of, but which did not necessarily adopt slavishly, the views expressed by other states in the final policy design.

² The pen-holder for the draft legislation that became EU, 2009a, was the Directorate General for Transport and Energy (DG-TREN), prior to its division into two DGs, one for Energy, one for Mobility and Transport.

The private actors in the policy process feature primarily at the implementation stage. These are the actors who actually implement the ESC, by monitoring and certifying that the production conditions of the feedstocks conform with the ESC. This is a critical dimension of the transnational policy challenge, because the feedstocks, the biofuels, or both, can come from anywhere in the world. Thus enforcement of the ESC involves on-the-ground engagement with producers of feedstocks located thousands of miles away from the EU.

It is not the purpose of the current paper to analyse in detail the certification process (see, *inter alia*, Ponte, 2014a). Rather, we focus on how the actors undertaking the certification process fit into the wider policy governance network. The EU receives and approves applications from organisations who propose certification schemes consistent with the ESC. There are currently 19 schemes approved.³ The types of body submitting schemes vary, from those who have been engaged with the certification of production for some time, to those established specifically in response to the ESC. Moreover, certification schemes have been received and approved from both multi-actor NGOs, and private sector companies involved directly in the production of biofuels.

The foregoing notwithstanding, some EU-approved schemes, such as that of Bonsucro, retain Bonsucro's full set of social and labour conditions carried over from its general standard. Given this feature of the Bonsucro scheme, why were social and labour standards excluded from the ESC? Had EU policy permitted the sale in the EU of only those biofuels that conform with the ESC, that would have represented, in WTO terms, a mandatory 'technical regulation'. This would have run the considerable risk of the policy falling foul of WTO rules over 'processing and production methods'. Instead, fiscal incentives were put in place to encourage the fuel companies to buy and blend only ESC-compliant biofuels, rather than mandating them to do so.

Thus the ESC constitute, in WTO terms, a 'voluntary standard', with the fiscal incentives needing to be sufficient to steer the fuel companies towards the desired EU policy outcome. This distinction is critical in trade policy terms given that, unlike for example Fairtrade coffee, consumers are not given a choice between 'sustainable' and 'unsustainable' biofuels at the point of purchase. (see also Ponte, 2014b). It also raises another question of more

³ <http://ec.europa.eu/energy/en/topics/renewable-energy/biofuels/voluntary-schemes>

general significance – in the context of TNG, does the presence of the WTO and the ‘shadow of hierarchy’ it casts mean that TNG policies and approaches will, necessarily, be entirely or mainly soft-law rather than hard-law?

Another group of actors, advocacy NGOs, seek to promote causes, ‘on behalf of others who lack the voice or access needed to promote their own interests’ (Teegen *et al*, 2004: 468). Their activities with regard to biofuels policies in general, and EU policy in particular, has been to focus on the actual and potential impacts of policies on the environment and on the poor, in particular in developing countries. Their activities have not, in all cases however, been in direct conflict with the broad thrust of the biofuels network. Notably, several are also members of the multi-actor NGOs driving the certification process.

That said, their actual impact on the design of EU policy, and on its governance through the network of actors, has thus far been modest. Indeed, it has been a feature of biofuels policies worldwide, not only with the EU, that external, international, pressures on policy have thus far had little impact on what were designed primarily as domestic policies. Even so, the efforts of advocacy NGOs have not been entirely without consequence, notably by drawing attention to particular potential downsides of biofuels – such as indirect land use change (ILUC) – although a detailed discussion of this issue is beyond the scope of this paper.

Promoting Advanced Biofuels

Given the aforementioned potential downsides of first generation biofuels, EU policy seeks, simultaneously, to encourage the development and commercialisation of advanced biofuels. These are, by definition, derived from non-food feedstocks, although since some are grown specifically for biofuels production, they may still generate land-use concerns. That said, not only are these concerns mitigated with advanced biofuels, the GHG emissions performance is, on average, much better. Moreover, the major technologies required for this to happen are known: the challenge is being able to scale them up and make them commercially viable.

What, though, about the incentives for the private sector to do this? There are clear fiscal incentives to encourage firms to ensure the first generation biofuels they buy and sell are ESC-compliant. With the promotion of advanced biofuels, however, the incentives are ambiguous, indirect and weaker – even though it is a key part of what policy delivery is predicated upon. Primarily, the incentive is that all advanced biofuels count either double or

quadruple towards the 10% target. This provides little incentive in relation to the research and development required, given also that there is no obvious, significant, margin on return to be had from supplying second generation biofuels to the EU market. Indeed, some EU-based firms were looking more at the US market as a location for investment, as US policy offered clearer benefits for the delivery of advanced biofuels. Furthermore, the scheduled increase in GHG emissions thresholds for eligible biofuels will see large volumes of first generation ceasing to be eligible for support. It is unclear whether this is sufficient to encourage companies to develop advanced biofuels, predicated as it is on the implicit assumption that biofuels are a sufficiently important part of these companies businesses that they will wish to continue operating in this market.

It is therefore significant from a governance viewpoint that this is an area where there are close, bilateral, working ties between policy-makers and private sector firms. Specifically the EU has been funding, and the European Commission actively engaged with, a series of projects which are supporting companies in their efforts to bring advanced biofuels to market. Even here, however, the scale of the EU policy ambition threatens to overshadow these efforts, given the hopes for the policy embedded in the development of advanced biofuels and the speed with which these developments must take place if the 2020 targets are to be met.

EU ESC and Network Governance

EU biofuels policy has been developed by policy-makers as a domestic response to a range of domestic and global policy challenges. The nature of biofuels production means that the certification bodies may be operating thousands of miles away from the EU, whilst the policy requires companies, to engage actively along the full length of the governance chain which parallels the supply chain. This system operates in a contested policy sphere, sustainability, in which International NGOs are very active, whilst the international dimension of biofuels production and distribution raises the question of the WTO compatibility of the policies put in place to govern the transnational biofuels market. Meanwhile, firms are also being encouraged to develop and to deliver to market, at scale, advanced biofuels.

EU policy-makers are trying to deliver EU policy goals without any direct policy levers to compel these other actors to participate in these networks. The different actors in the networks have sovereignty, or authority, over their own skill-set and knowledge, all of which is required for the network to deliver on EU policy. Thus control of policy design remains,

primarily, with EU policy-makers; whereas governance of the network required for policy implementation is diffuse. The EU does not even cast a shadow of hierarchy over the other actors in this network. In this regard, it is an important feature of policy that the EU is involving multi-actor NGOs who, in many cases, are already in existence and whose functions extend beyond biofuels. The EU is asking these certifiers to do for EU biofuels policy what they already do for those feedstocks in other contexts. These certifiers thus exist and operate independently of biofuels, which is extremely important given the strongly divisive debates that biofuels can trigger. Engaging with existing certification networks and processes can also help the EU 'normalise' this element of its biofuels policy.

Teegen (2003: 280) refers to the reputation of Nature Conservancy in performing its 'bonding' role. Yet in our ESC example, as the foregoing shows, the multi-actor NGOs do much more than provide an interface between private and public actors: notions of bridging and bonding are useful reference points, but they understate the roles performed by the multi-actor NGOs in our case study. Indeed, bridging and bonding are built upon incompatibilities, whereas the EU biofuels policy governance network involves mutually compatible interests and complementary functions. Moreover, it is also plausible that the involvement of the EU might, in turn, lend the non-state actors in the network 'formal authority' (Katsikas, 2010: 126), thereby enhancing their authority.

Despite the challenges faced by the EU biofuels policy governance network, and the tensions that exist between different actors with diverse interests, we have not yet seen the network fragment. In a transnational network that lacks hierarchy, different non-state actors have engaged with each other and taken on the various roles required for the network to function. Thus we have seen biofuels being delivered to market – albeit unevenly across EU member states and, overall, not at the level desired by policy. On the other hand, when policy-makers have asked firms to deliver advanced biofuels to market, even collaborating with them on research and development, the lack of clear market or policy incentives has thus far had much less success.

Underlying EU biofuels policy is the implicit idea that the policy goals can be delivered without consumers having to adapt their own behaviours. Indeed, the way the policy has been designed and implemented, consumers cannot make expressive consumption decisions over biofuels, in the way they can over choosing between, say, Fairtrade and non-Fairtrade coffee.

In contrast, firms *must* change what they do. The challenge for policy-makers is to find ways to promote this in the absence of hierarchy-based authority: the foregoing has indicated mixed success thus far. The issue for firms is how best to engage with this new configuration of economic actors operating in transnational networks.

Notes to bring in somewhere

Bulkeley *et al*, 2014, 72-73, offer thoughts on ‘hybrid governance initiatives’, hybrid involving state and nonstate actors. Specifically, (page 73), ‘hybrid governance entails not only new governance beyond the state but a process of redefining the scope of public and private authority in identifying and pursuing governance objectives’. In a book about ‘Transnational Climate Change Governance’, it is clear that ‘beyond the state’ has a geographical meaning. Moreover (page 73) ‘Such hybrid forms of TCCG can be regarded as filling governance gaps left between the agency and reach of the public and private; from a critical perspective, this reconfiguration is regarded as a central element in the reorganisation of political authority under neo-liberalism.’ **Note to self – I must read this entire chapter.**

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